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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning Alleged Attempt at Resale Price Maintenance
in the Sale of Certain Household Supplies in the
Chicoutimi-Lake St. John District, Quebec

DEPARTMENT OF JUSTICE
OTTAWA
1953

RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING ALLEGED ATTEMPT AT RESALE PRICE
MAINTENANCE IN THE SALE OF CERTAIN HOUSE-
HOLD SUPPLIES IN THE CHICOUTIMI -
LAKE ST. JOHN DISTRICT, QUEBEC

COMBINES INVESTIGATION ACT

Ottawa
1953



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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Guy Favreau, B.A., LL.B.
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December 29, 1953.

Honourable Stuart S. Garson, Q. C.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith in French and in English the report of the Restrictive Trade Practices Commission dealing with an alleged attempt at resale price maintenance in the sale of products of Beaver Products Company, Limited in the Chicoutimi - Lake St. John district of Quebec.

The matter was brought before the Commission by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Act.

Argument on the Statement of Evidence submitted by the Director of Investigation and Research was heard by the Commission at Montreal, P. Q., on May 11, and June 23, 1953, when Messrs. Paul Gérin-Lajoie and J. J. Quinlan appeared on behalf of the Director, and Mr. Lucien Tremblay, Q. C., appeared on behalf of Beaver Products Company, Limited and other interested parties.

Yours faithfully,

(Sgd.) C. R. Smith

Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was brought before the Restrictive Trade Practices Commission under Section 18 of the Combines Investigation Act, R. S. 1952, Chapter 314, which reads as follows:

"18. (1) At any stage of an inquiry,

(a) The Director may, if he is of the opinion that the evidence obtained discloses a situation contrary to section thirty-two or thirty-four of this Act, or section four hundred and ninety-eight or four hundred and ninety-eight A of the Criminal Code, and

(b) the Director shall, if so required by the Minister, prepare a statement of the evidence obtained in the inquiry, which shall be submitted to the Commission and to each person against whom an allegation is made therein.

(2) Upon receipt of the statement referred to in subsection one, the Commission shall fix a place, time and date at which argument in support of such statement may be submitted by or on behalf of the Director, and at which such persons against whom an allegation has been made in such statement shall be allowed full opportunity to be heard in person or by counsel.

(3) The Commission shall, in accordance with this Act, consider the statement submitted by the Director under subsection one together with such further or other evidence or material as the Commission considers advisable.

(4) No report shall be made by the Commission under section nineteen or twenty-two against any person unless such person has been allowed full opportunity to be heard as provided in subsection two."

The Director of Investigation and Research under the Combines Investigation Act submitted to the Restrictive Trade Practices Commission a Statement of Evidence dated the 7th day of April, 1953, which contained the following allegations:

1. That Beaver Products Co., Limited (hereinafter referred to as "Beaver Products"), being a dealer within the meaning

of Section 34 of the Combines Investigation Act (enacted as Section 37A by Chapter 30 of the Statutes of Canada, 1951 (2nd Session) and renumbered by Chapter 39 of the Statutes of Canada, 1952) did, on or about the 11th day of January, 1952, by threat, promise or other means attempt to require or induce Grosserie Centrale, Incorporée (hereinafter referred to as "Grosserie Centrale") of Jonquière in the Province of Quebec, to resell floor, metal and leather polishes and related products at a price not less than a minimum price specified by Beaver Products.

2. That, after the attempt alleged in the foregoing paragraph had failed, Beaver Products, a dealer as aforesaid, did, between the 11th day of January, 1952, and the 4th day of December, 1952, refuse to sell or supply floor, metal and leather polishes and related products to Grosserie Centrale aforesaid for the reason that Grosserie Centrale had refused to resell or to offer for sale the said floor, metal and leather polishes and related products at a price not less than the minimum price specified by Beaver Products.
3. That the misconduct alleged in paragraphs 1 and 2 hereof was carried out by Beaver Products by and through its officials and employees, all of whom were acting in the course of their employment and within the scope of their authority as such officials or employees.

The Statement of Evidence further stated that in the opinion of the Director the following persons, who were officials or employees of Beaver Products during the whole of the period mentioned in paragraphs 1 and 2 hereof, were concerned in the alleged misconduct.

Joseph Ménard
R. Lavoie

At the same time that the Statement of Evidence was submitted to the Restrictive Trade Practices Commission, copies were sent by the Director to Beaver Products Co., Limited and to the persons named in the allegations.

2. Legislation Affecting Resale Price Maintenance

Legislation affecting the practice of resale price maintenance was enacted at the Second Session of the Parliament of Canada in 1951, following and in accordance with recommendations made in an interim report on this subject by the Committee to Study Combines Legislation submitted in October, 1951.

The following definition of the practice was given in the Committee's interim report:

"By resale price maintenance we understand the practice designed to ensure that a particular article shall not be resold by retailers, wholesalers or other distributors at less than the price prescribed by the supplier, that is, in most cases, the manufacturer."

By Section 11 of Chapter 30 of the Statutes of Canada, 1951 (2nd Session) a new Section 37A was added to the Combines Investigation Act, which Section 37A was renumbered as Section 34 by Section 4 of Chapter 39 of the Statutes of Canada, 1952. This Section, which came into force on December 29, 1951, enacts as follows:

"34. (1) In this section 'dealer' means a person engaged in the business of manufacturing or supplying or selling any article or commodity.

(2) No dealer shall directly or indirectly by agreement, threat, promise or any other means whatsoever require or induce or attempt to require or induce any other person to resell an article or commodity

- (a) at a price specified by the dealer or established by agreement,
- (b) at a price not less than a minimum price specified by the dealer or established by agreement,
- (c) at a markup or discount specified by the dealer or established by agreement,
- (d) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
- (e) at a discount not greater than a maximum discount specified by the dealer or established by agreement,

whether such markup or discount or minimum markup or maximum discount is expressed as a percentage or otherwise.

(3) No dealer shall refuse to sell or supply an article or commodity to any other person for the reason that such other person

- (a) has refused to resell or to offer for resale the article or commodity
 - (i) at a price specified by the dealer or established by agreement,
 - (ii) at a price not less than a minimum price specified by the dealer or established by agreement,

- (iii) at a markup or discount specified by the dealer or established by agreement,
 - (iv) at a markup not less than a minimum markup specified by the dealer or established by agreement, or
 - (v) at a discount not greater than a maximum discount specified by the dealer or established by agreement, or
- (b) has resold or offered to resell the article or commodity
- (i) at a price less than a price or minimum price specified by the dealer or established by agreement,
 - (ii) at a markup less than a markup or minimum markup specified by the dealer or established by agreement, or
 - (iii) at a discount greater than a discount or maximum discount specified by the dealer or established by agreement.

(4) Every person who violates subsection two or three is guilty of an indictable offence and is liable on conviction to a fine in the discretion of the court or to imprisonment for a term not exceeding two years or to both."

This new section of the Combines Investigation Act forbids a manufacturer or other supplier from requiring or inducing, directly or indirectly, any other person to resell an article at a specified price or at not less than a minimum price, and makes it unlawful for a supplier to refuse to sell or supply an article or commodity to any other person for the reason that such person has resold or offered to resell the article or commodity at less than a price specified by the supplier or has refused to resell or offer for resale the commodity at not less than a specified price.

3. Hearings and Witnesses

Hearings for the taking of evidence in the inquiry had been held, on application by the Director of Investigation and Research, before Mr. Guy Favreau, a member of the Commission, at Chicoutimi and Jonquière on December 4, 1952. At Chicoutimi Joseph Ménard, district salesman of Beaver Products Co., Limited was examined and at Jonquière the witness was Gérard Dumais, manager of Grosserie Centrale, Incorporee.

The hearing of argument on the Statement submitted by the Director of Investigation and Research took place first at the City of Montreal on the 11th day of May, 1953. The corporation and persons named in the Statement of Evidence had been given adequate notice in writing in advance of the hearing and had been informed that all persons against whom an allegation had been made would be allowed full opportunity to be heard in person or by counsel at the hearing. All those named in the Statement of Evidence as having carried out or been concerned in the alleged misconduct were represented by counsel, who made representations on their behalf. On hearing the argument made by counsel on behalf of the Director of Investigation and Research and the representations made by counsel on behalf of Beaver Products Co., Limited and Roméo Lavoie and Joseph Ménard, sales manager and district salesman respectively, the Commission was of the opinion that evidence should be given by Roméo Lavoie, sales manager, who had not been examined during the hearings on December 4. Accordingly, the hearing was adjourned until June 23, 1953, when Roméo Lavoie appeared voluntarily and gave evidence and further argument was presented by the respective counsel.



CHAPTER II

ORGANIZATION AND METHOD OF OPERATION OF GROSSEUR CENTRALE, INC.

Grosserie Centrale, Inc. of Jonquière, P. Q., was incorporated under the laws of the Province of Quebec, about June 1951, to conduct a wholesale grocery business. At the start there were eleven shareholders, all of whom with the exception of the manager and one other were merchants engaged in business in the Chicoutimi - Lake St. John district. The company secured warehouse premises at Jonquière with railway facilities so that shipments could be unloaded directly from railway cars into the company's warehouse.

The persons interested in establishing Grosserie Centrale, Inc. decided to depart from the more or less traditional manner in which the wholesaling of grocery products was carried on in the Chicoutimi - Lake St. John district by operating the new business on what might be called a "cash and carry" basis. The goods which the company handled were sold at its warehouse and customers, consisting of retail merchants in Jonquière and the surrounding district, would either call for their purchases themselves or take the responsibility of delivery to their stores.

In his evidence Gérard Dumais, manager of Grosserie Centrale, Inc. stated that the company did not operate under the same system as other wholesale merchants in the district. Questioned on this point he said:

"It differs in this, that at present we do not deliver and our overhead is much less than at Chicoutimi, from the point of view of location, because the freight cars arrive at our place, and there is less handling; which requires less man-power, which permits us to give better prices."

(Translation, Evidence, December 4, 1952, p. 73)

He went on to say that local merchants generally called themselves for the merchandise they purchased and that for those customers who did not come with their own trucks, arrangements were made to have a general trucker deliver the merchandise at the customer's expense.

Grosserie Centrale, Inc. requires its customers to settle their accounts within seven days for the Jonquière area and within fifteen days for customers in other parts of the Lake St. John district. Grosserie Centrale, Inc. solicits business in the main by

sending circulars to its customers and has had only one or two salesmen on the road. Mr. Dumais, the manager, said that Grosserie Centrale, Inc. is interested in creating more favourable conditions for retail grocers, because it realizes that the company's prosperity depends on the prosperity of the independent merchant. At one point in his evidence he said:

". . . Last year in our circulars, I had published a series of articles, it was a series that ran 3 or 4 weeks saying this: 'What would you do if a chain of stores were established near your store?' It is because today there are chains of stores which are very strong, which offer stiff competition to our merchants. Then I wrote a series of articles, and I suggested to them how they might keep their customers, bring out specials, cut down credit, cut their expenses, in order to lower their prices, so that the customers might benefit, bearing always in mind that food prices are an important matter.

Q. Is the Grosserie Centrale's programme to have prices lower than those previously charged, prices less costly for the retailers?

A. Yes, that is partly our aim, in order to be able to help the merchants to meet the competition or at least to be able to compete with the chain stores, because today, with the prices which we have, and if the merchant goes part way, by cutting his expenses, he can easily cope with the chain stores and moreover, it is our aim equally, in order to help our merchants, to meet competition. Naturally, we are not philanthropists. It is a matter of keeping our business open, in order that trade might flourish more, than if there were only chain stores."

(Translation, Evidence, December 4, 1952, pp. 78 and 79)

CHAPTER III

ATTEMPTS BY JOSEPH MENARD TO INDUCE GROSSEUR CENTRALE, INC. TO GIVE AN UNDERTAKING TO OBSERVE MINIMUM RESALE PRICES

As soon as Grosserie Centrale, Inc. was incorporated it sent a circular letter to a number of manufacturers giving information about the new company and the business which it expected to do. These letters were sent out in order to assist Grosserie Centrale, Inc. to secure recognition as a wholesaler. Mr. Dumais stated in evidence that while some manufacturers delayed for some months before extending recognition, in the main, Grosserie Centrale, Inc. did not experience any great difficulty in being accepted as a wholesaler.

One of the manufacturers to whom Grosserie Centrale, Inc. sent a circular letter was Beaver Products Co., Ltd. of Ville St. Laurent, P. Q. Under date of July 10, 1951, R. Lavoie, sales manager of Beaver Products Co., Ltd., wrote as follows to Louis C. Gagnon, secretary, Grosserie Centrale, Inc.:

"We have in hand your letter informing us of the incorporation of your house as a wholesale grocery, and at the same time soliciting the opening of an account with us.

You are aware of the fact, that at the present time there is some uncertainty with regard to the delivery of raw material to manufacturers, which makes it impossible for us to fill completely the orders received from our present customers.

For this reason we cannot at this time grant your request to forward to you the merchandise you may need."

(Translation, Exhibit P. 1)

Beaver Products Co., Ltd. is a manufacturer of floor waxes and leather, metal and stove polishes and other lines. It is represented in the Chicoutimi - Lake St. John district by a salesman, Joseph Ménard of Port Alfred, who makes periodic trips through the district. Mr. Ménard is employed exclusively by Beaver Products Co., Ltd. and is paid on a salary and commission basis. Sales are made by Beaver Products Co., Ltd. to wholesalers in the district and also to certain retail merchants who have been accepted as direct accounts. Mr. Ménard stated in evidence that some retail merchants had been recognized as direct accounts when the products of Beaver Products

Co., Ltd. were being introduced for the first time into the Chicoutimi Lake St. John district and that these accounts had been opened by the company's salesman during that period in order to secure wider distribution and to make the trade names of the products more widely known. The terms on which the older direct accounts are sold are usually as favourable as those given to wholesalers but when, because of competitive conditions, retailers are now accepted as direct accounts they are usually allowed a smaller discount.

In addition to visiting wholesalers and retailers who are direct accounts of Beaver Products Co., Ltd. Mr. Ménard calls on other merchants and any orders secured in this way are credited to the wholesale merchants who supply the retailers so ordering. It was stated in evidence by Mr. Ménard that, in order to accommodate wholesalers and other direct customers who might be short of particular goods, he maintained at his home a stock of products of Beaver Products Co., Ltd. for the purpose of filling out orders of direct buyers, but not for regular distribution. In the Chicoutimi - Lake St. John district about two-thirds of the sales of products of Beaver Products Co., Ltd. consist of floor wax.

Some time after Grosserie Centrale, Inc. had received the letter of July 10, 1951, from Beaver Products Co., Ltd. Mr. Dumais telephoned Mr. Ménard and, according to evidence, got the impression that Mr. Ménard was rather put out because Grosserie Centrale, Inc. had written to the manufacturer directly rather than approaching him first. Mr. Dumais went on to state in evidence, that Mr. Ménard told him he was about to call on Grosserie Centrale, Inc. This call was made in the fall of 1951, according to Mr. Dumais' best recollection in the month of October. No progress was made at this meeting toward the acceptance of Grosserie Centrale, Inc. as a recognized dealer for the products of Beaver Products Co., Ltd., but Mr. Ménard stated in evidence that he suggested that if orders to be placed through Grosserie Centrale, Inc. by its customers appeared in sufficient volume he might be able to secure favourable attention by Beaver Products Co., Ltd. to the application for acceptance as a wholesaler.

Mr. Dumais gave evidence to the effect that toward the end of December he visited Mr. Ménard at his residence in Port Alfred and that during the discussion Mr. Ménard gave him to understand that he did not wish to see Grosserie Centrale, Inc. compete in price with other wholesalers in the sale of products of Beaver Products Co., Ltd. According to Mr. Dumais' evidence, Ménard told him during this visit that if an agreement not to cut prices were signed on behalf of Grosserie Centrale, Inc. he, Ménard, might succeed in having it accepted as a direct account of Beaver Products Co., Ltd. It may be recalled that the amendment to the Combines Investigation Act on resale price maintenance came into force on December 29, 1951.

In January 1952, Mr. Ménard attended a sales meeting at the office of Beaver Products Co., Ltd. During this visit he stated

that he had a discussion with Mr. Lavoie, sales manager, on the subject of accepting Grosserie Centrale, Inc. as an account. He went on:

"I wanted to open the account, but he did not. He said it was not the right time."

(Translation, Evidence, December 4, 1952, p. 55)

Further in his evidence Mr. Ménard stated that following his discussion with the sales manager he tried to think of some way which would assist in having Grosserie Centrale, Inc. accepted as a customer of Beaver Products Co., Ltd. and on his own initiative he prepared a form of undertaking to be presented to Grosserie Centrale, Inc. This was typed on plain paper by a junior employee of Beaver Products Co., Ltd. while Ménard was still in its offices. The document was in the following form:

"January 11, 1952

Beaver Products Company Limited,
Ville St-Laurent, P. Q.

Dear Sirs,

In consideration of the fact that you agree to open our account as a wholesale grocery, on the same terms and conditions actually prevailing among all the wholesale groceries, we hereby agree to sell your products at the same prices as those currently maintained by the wholesale groceries of the district of Chicoutimi, Lake St. John."

(Translation, Exhibit P. 2)

Mr. Ménard stated that he did not inform Mr. Lavoie that he had prepared a form of undertaking or that he intended to approach Grosserie Centrale, Inc. with it. His evidence on this point was as follows:

"Q. Was this letter typed in your office at Port Alfred?

A. No, it was when I was in the Montreal Office, I asked a young girl to prepare it. She was about to do it on company letter-head and I said, 'Do not use that. It is I, not the company.' I was not inclined to tell them that I was doing that, because I did not want them to know. I do not recall whether it was a young boy or a young girl whom I asked, but I know that they did the letter for me and gave it to me personally in an envelope, so that the company would not see it.

Q. That employee was the only one in the Beaver Products Company who knew this?

A. Yes, I did not want the others to know, because they might perhaps have placed more obstacles in the way and you

know one resorts to all sorts of tricks in order to open an account."

(Translation, Evidence, December 4, 1952, pp. 21 and 22)

No clear statement was made by Mr. Ménard in evidence as to the reason why he had drafted the proposed undertaking in the form in which it appeared in Exhibit P. 2. His evidence was, in part as follows:

"Q. This document might imply that Grosserie Centrale was recognized as a price cutter?

A. No. Not as a price cutter; that is not it. The idea I had personally was to make an effort to open this account, at that time I wanted to open the account.

COMMISSIONER FAVREAU:

Q. It was to persuade the company to open the account?

A. Yes.

Q. It was not to persuade Mr. Gagnon to become a customer?

A. No, I wished them to open an account.

Q. You wished your employers to open the account?

A. Yes.

. . .

Q. If Grosserie Centrale had signed this document guaranteeing that it would sell at certain prices in the future were you promising that their account would be accepted?

A. Well, as I have said, when one wants to open an account that one thinks he can get, one will try anything to open it.

BY MR. BEAUCHEMIN:

Q. Mr. Dumais refused to sign that?

A. Right away, yes, he said 'I am not signing that.' I said to him 'That's fine.'

Q. What reason did he give?

A. He said 'I am not signing that.' I said 'That's fine.'

Afterwards he started talking about the products and he said 'We're going to keep the lines we want.' I told him 'No, you're going to keep them all or you won't keep any.' I then stopped further efforts to open their account.

Q. Exhibit P. 2 says 'we hereby agree to sell your products at the same prices as those currently maintained by the wholesale groceries of the district of Chicoutimi, Lake St. John'; were they lowering the prices which the wholesalers were giving?

A. That is to say, the others [jobbers] were giving 10% for two cases or more, which is what is normally given. Now, we are not the ones who fixed that, they did that amongst themselves and ordinarily that is how they hold together."

(Translation, Evidence, December 4, 1952, pp. 23-25)

Mr. Dumais, manager, Grosserie Centrale, Inc. stated in evidence that Mr. Ménard called at his office with the draft letter of January 11, 1952. His evidence included the following:

"Q. Was it approximately at the date indicated on the letter?

A. Yes, it was a few days later than that, but it was during the month of January. He came to my office, and I objected to this, saying that I could not undertake to sign such a document, because my prices, in view of the fact that I had no delivery service, it was necessary for the customers to come and get their merchandise. It was necessary that they should be compensated somewhat on the price. He replied that it was absolutely necessary for me to sign that letter, in order to have his products."

(Translation, Evidence, December 4, 1952, pp. 81 and 82)

During his examination Mr. Dumais was asked what representations were made to him by Mr. Ménard in seeking his signature to the proposed undertaking. Mr. Dumais' evidence on this point was as follows:

"A. He told me to sign it, but before that, he said that he would succeed in opening my account in order to send me merchandise. I said that I would speak to the directors because that was a matter which I did not wish to decide for myself. At the first meeting of the directors, I submitted the case and the directors were not in favour of my signing. I told them that I did not wish to sign it either, and I telephoned Mr. Ménard to tell him that the Board of Directors had not authorized the signature of that letter. Then it remained in suspense, because I did not obtain his products."

(Translation, Evidence, December 4, 1952, pp. 82 and 83)

Some time later in the winter Mr. Dumais visited Montreal and telephoned Mr. Lavoie, sales manager, Beaver Products Co., Ltd. at the latter's office. The following statements were made by Mr. Dumais in his evidence as to the telephone conversation:

"COMMISSIONER FAVREAU

...

Q. After that letter, he asked you to sign that letter in January; after that letter, did you take any further steps with regard to the company or Mr. Ménard?

A. To be exact, during the winter, I cannot tell precisely, on what date, I went to Montreal, but I was not able to go to the Beaver Products office. . . . I telephoned Mr. Lavoie and I spoke to him about the matter and the consequences, but he seemed to approve his traveller.

Q. Could you say a little more precisely what you mean in saying that he seemed to approve his traveller?

A. He confirmed the statements of his traveller in what concerned prices.

Q. Between Mr. Lavoie and you, did any other question arise besides that of prices, was there a question of the lines you would carry?

A. No.

BY MR. BEAUCHEMIN:

Q. Did Mr. Lavoie give you to understand that that letter was the only obstacle in the way of your being recognized as a wholesale merchant?

A. It was the only obstacle of which we spoke.

Q. Did he speak of anything else, of the scarcity of merchandise?

A. Not at all.

Q. Was that a little later in the winter?

A. Yes, . . ."

(Translation, Evidence, December 4, 1952, pp. 87 and 88)

At a later stage in his evidence, Mr. Dumais was again questioned as to his telephone conversation with Mr. Lavoie and he testified as follows:

"Q. When you spoke to Mr. Lavoie in Montreal, you said a while ago that he seemed to approve his traveller?

A. He confirmed him.

Q. He confirmed the statements of his representative, Mr. Ménard?

A. Yes, he seemed to confirm the statements of Mr. Ménard.

Q. At that time was there any question between you and him of the letter Exhibit P.2?

A. Yes, I asked him, if this letter had been prepared by the traveller or by the firm, because I had always believed that it was the traveller who had written it.

Q. What did he answer?

A. Mr. Lavoie told me that he was the one who had composed it."

(Translation, Evidence, December 4, 1952, p. 92)

Mr. Lavoie said in evidence that he vaguely remembered having a telephone conversation with Mr. Dumais during the winter of 1951-52. He stated, in part:

"Q. Concerning Mr. Ménard, Mr. Dumais contends that you would have told him that you were endorsing all that your salesman had done. What have you told him in your telephone conversation?

A. What I have told him, naturally two years or rather a year and a half have elapsed since then, I cannot remember the words verbatim, but I know that not wanting to go over the head of the salesman, I must defend or not endorse him, but not place him, not place the traveller into difficulties, take the responsibility up to a certain extent for what he may do or discuss with the traveller (?) later on."

(Translation, Evidence, June 23, 1953, p. 6)

Further, in regard to the letter of January 11, 1952, his evidence was as follows:

"COMMISSIONER FAVREAU:

During the conversation you had by telephone with Mr. Dumais in the winter of 1951-1952, at a time you cannot give the

exact date, according to what you said previously, was there any mention by Mr. Dumais of the letter produced as Exhibit P-2, which the attorney, acting for the company, has just read?

A. I do not think so. I cannot remember there was any mention of that letter.

Q. The letter is dated January 11, 1952. Was that letter drawn up to your knowledge, in Montreal, at your home or elsewhere?

A. I do not know.

Q. You do not know?

A. No."

(Translation, Evidence, June 23, 1953, pp. 8 and 9)

When questioned as to the authority given to company salesmen Mr. Lavoie gave the following evidence:

"Q. Am I to understand that the salesmen, that the representatives of a particular district have jurisdiction to choose the means which they deem most opportune in the district to obtain clients?

A. That is, no, they never have jurisdiction, but they may submit, a salesman may discuss, each one will discuss his local problems with the sales manager, because the problems vary with each territory. It is not up to him to take the decisions, it is the sales manager who takes the decisions, but the sales manager must not pass over the head of his representatives before the customers, in order to safeguard his prestige.

Q. Did you discuss or not with Mr. Ménard this particular problem in your district, in Mr. Ménard's district, that is, the district of Lake St. John - Chicoutimi, and the drawing up of that letter of January 11, 1952 concerning the matter of maintaining prices?

A. That was not discussed. At first, Mr. Ménard was interested in opening this account, as soon as Grosserie Centrale was established. And that is bad policy to open an account to a 'jobber' who could not operate immediately. It is the business of the sales manager to find out what kind of business - - - For the salesman, it is the immediate sale that counts.

Q. Does it mean that the letter of [10th] July 1951 stated you did not want to open that account immediately?

A. That is so.

Q. Are we to understand that it was one of the problems which was especially discussed with you or that this letter was not referred to you personally?

A. That letter was not referred to me.

Q. When did you first hear about that date of January 11, 1952?

A. When I received a copy from the Commission - - -"

(Translation, Evidence, June 23, 1953, pp. 13-15)

When Mr. Dumais found it was impossible for Grosserie Centrale, Inc. to make purchases directly from Beaver Products Co., Ltd. he wrote to Mr. T. D. MacDonald, then Commissioner under the Combines Investigation Act, describing the experiences of his company in seeking recognition as a wholesaler. The Commissioner then wrote to Beaver Products Co., Ltd. on July 15, 1952, enclosing a copy of the draft letter of January 11, (Exhibit P. 2) and inviting comments on the situation with respect to Grosserie Centrale, Inc. In a reply dated July 24, R. Lavoie, sales manager, Beaver Products Co., Ltd. wrote as follows:

"Mr. T. D. MacDonald,
Commissioner,
Combines Investigation Commission,
Department of Justice,
Ottawa.

Dear Sir:

We beg to acknowledge receipt of your letter of the 15th instant regarding our refusal to sell to the 'Grosserie Centrale Inc.' of Jonquieres, Quebec, for the reason that they refused to sign a pledge to maintain our fixed prices.

We wish to inform you that we have refused to sell to the above mentioned firm for the only reason that it was a new organization and it is our policy not to sell to a new wholesaler. After a while when we are satisf[ied] with their credit, the way they deal with their customers, and that they prove to be a serious organization, their application is given consideration in due time.

We know from experience that too many people start in the wholesale business without experience or without enough capital and they are just a source of trouble, when we have a good distribution of our goods with well established wholesaler[s] who have cooperated with us for years.

You may not be aware that many persons have started in business and are still opening wholesale business and to help them to get into the market are trying to buy the leading brands of which very often they undercut the prices as a bait to get customers. They know they could not succeed with unknown brands, slow moving goods or even their own brands. We have established our brand at the cost of heavy expense. We are dealing through wholesalers and have had their cooperation in allowing them a fair mark up and if the mark up had been too high, we know that someone would have started to reduce that mark up.

We have no maintained prices because we are aware that it is unlawful. Although our prices are f. o. b. destination we know that wholesalers are selling at different prices all over the province.

As to the copy of the pledge they were asked to sign, we did not have any knowledge of it, and being made on a blank sheet of paper nor not being signed, it seems to us of very poor value.

We will proceed with the Grosserie Centrale Inc., as in the case of any new wholesaler, that is when we are satisfied with the service and the way they deal with their customers, we will consider their application.

Yours very truly,
BEAVER PRODUCTS CO. LTD.,

(Sgd.) R. Lavoie

Sales Manager"

(Exhibit P. 7)

In the interval, under date of July 17, Mr. Lavoie had written to Mr. Ménard in regard to the complaint of Grosserie Centrale, Inc. Mr. Ménard replied to this inquiry in a rambling inter-office memorandum dated July 19, (Exhibit P. 4) in which he described the organization of Grosserie Centrale, Inc. and reported that another manufacturer of wax products had placed stocks with Grosserie Centrale, Inc. which, in his opinion, tended to lead other wholesalers to give all possible co-operation in the sale of goods manufactured by Beaver Products Co., Ltd. The whole tone of the report was unfavourable to Grosserie Centrale, Inc. and Ménard wrote that he would prefer the continuation of the present situation without the new organization being accepted as a direct account of Beaver Products Co., Ltd. He went on to describe how Grosserie Centrale, Inc. was securing goods of Beaver Products Co., Ltd. indirectly through one of its directors who was a direct account of Beaver Products Co., Ltd. In this connection Mr. Ménard wrote:

". . . If you will take a look at this account you will find that this is very little for a jobber; when he knows that I am in that city, he cuts prices as much as he can, but as you can readily see, he hasn't done me much harm. I have never cut prices by one cent."

(Translation, Exhibit P.4)

In concluding his report Mr. Ménard wrote:

"You may be assured of one thing, the undertaking which I have asked them to sign, was only to find out if they were capable to co-operate and to prove their goodwill to do it, but not at all to open that account? Is that all right? If there is something else, I shall be glad to keep you advised."

(Translation, Exhibit P.4)

No further consideration of the matter of accepting Grosserie Centrale, Inc. as a direct account by Beaver Products Co., Ltd. is indicated by the evidence until November 24, 1952. A handwritten memorandum from Mr. Lavoie to Mr. Ménard bears the date "24 Nov. 1951", but as Mr. Ménard stated in evidence that he received it a week or so before he appeared as a witness on December 4, 1952, the correct date of this memorandum must be 1952. In the memorandum Mr. Lavoie wrote:

"What do you hear about Grosserie Centrale? How is their business progressing?

Do they have a good assortment of goods or are many manufacturers still turning them down?

Are they following jobbers' prices or are they cutting those prices much?

In short I am very much interested to know all about them, what kind of business they are doing"

(Translation, Exhibit P.3)

At the time the inquiry was held Mr. Ménard, according to his evidence, was making no effort to secure recognition of Grosserie Centrale, Inc. as a direct account and, in fact, was opposed to such recognition by Beaver Products Co., Ltd. while Mr. Lavoie had not decided that the time had arrived to sell directly to Grosserie Centrale, Inc. Goods manufactured by Beaver Products Co., Ltd. which Grosserie Centrale, Inc. wished to secure, were being purchased indirectly through one of its directors who was a direct account of Beaver Products Co., Ltd.

CHAPTER IV

CONCLUSIONS

This inquiry has been concerned with the situation faced by a new organization seeking to operate a system of distribution which departed from the full-service system of wholesaling generally followed in the district by older firms. In its immediate aspects the problem under examination embraces the circumstances involved in the efforts made by an individual dealer seeking to secure supplies from an individual manufacturer. In the Commission's view, however, the situation disclosed has wider implications bearing on the maintenance of a competitive economy and the promotion of freedom of opportunity which permits new methods of conducting business to be subjected to the test of the market place. It is from both points of view, therefore, that the evidence in this case is considered.

Grosserie Centrale, Inc. of Jonquière has from its commencement as a grocery wholesaler operated under a system of selling whereby its customers, retailers from the locality and surrounding district, assumed the responsibility of delivery of the goods purchased at the warehouse. This system differs from the full-service system of wholesaling under which salesmen of the wholesale merchant call on the individual retailers to book orders for the goods desired which are then delivered to the purchaser under customary credit terms. It is obvious that the plan of Grosserie Centrale, Inc. with no delivery and limited time for payment could not attract customers unless its selling prices were such as to offer the buyer compensation for assuming the cost of delivery and making cash payment. A situation which would force or require a wholesale dealer operating under such a plan to sell at the same prices as competitors offering full-service in the booking of orders, delivery of goods and provision of credit would make it impossible to put to the test whether any savings could be effected by a system under which the retailer himself assumed some of the functions performed under the traditional method of wholesaling.

1. As to Joseph Ménard

The evidence is clear that Joseph Ménard as salesman for Beaver Products Co., Ltd. attempted to induce the manager of Grosserie Centrale, Inc. to make an agreement to observe minimum resale prices in the sale of products of Beaver Products Co., Ltd. Mr. Ménard said that he proposed the agreement on his own initiative without consultation with officials of Beaver Products Co., Ltd. and without direction and that no one else in the company, except a junior employee who typed the draft letter (Exhibit P.2) knew about it. Further, Mr. Ménard said that he made the attempt because he

thought if he could secure such an undertaking from Grosserie Centrale, Inc. he might be able to change the decision previously made by the sales manager of Beaver Products Co., Ltd. not to accept Grosserie Centrale, Inc. as a wholesale account.

It has been contended that no specific prices were indicated in the letter and that consequently, the principle of Section 34 of the Act has not been infringed. The undertaking refers to an agreement to sell the products concerned "at the same prices as those currently maintained by the wholesale groceries of the district of Chicoutimi - Lake St. John." In our opinion, this is a sufficient indication of the prices or of the range of prices to fall within the ambit of the provisions, so long as such prices or range of prices were ascertainable.

Obviously, to the knowledge of Mr. Ménard there did exist in the district for each product a given price or mark-up which was recognized as the lowest at which sales were then made to retailers (although perhaps higher prices or mark-ups were sometimes obtained) or he must have had in mind a given scale of discounts which was the largest to be given by wholesalers to retailers (even though perhaps lesser discounts were sometimes given); otherwise, Mr. Ménard would have used an altogether different wording. The signing of the undertaking was to be the determining factor in making his recommendation for recognition of Grosserie Centrale, Inc. as a wholesaler. Therefore, it was so important in his mind that the expression used must have had a very definite meaning. Thus, even one were to accept Mr. Ménard's statement that there were variations between prices ("some sell a can of polish at \$1.19 and others at .99") and that some wholesalers were giving discounts of 10 or even 12 per cent according to circumstances, the reference to the "prices currently maintained" was evidently a reference to a commonly accepted range of prices and/or to a commonly accepted range of discounts, thus allowing any person signing this undertaking, to act in accordance with such agreement.

At all events, Dumais has stated that, to his mind, the expression "prices currently maintained" referred to something quite clear and distinct. At page 84 of his evidence given on December 4, 1952, Mr. Dumais was examined by the Commissioner as to whether, had he signed the undertaking, he could have followed it. He answered that Ménard was to give the prices to him and that, at that time, Ménard told him verbally the prices followed by Chicoutimi - Lake St. John wholesalers. Dumais then described the prevailing prices, discounts and price ranges.

It may be objected that the principle of the Act was not contravened by Ménard, because he was only an employee of Beaver Products Co., Ltd. and because he was not even sure that Grosserie Centrale, Inc. would ultimately be accepted as a wholesaler by his employer; so that he could not be said to have been at fault under the provisions of the legislation forbidding a "dealer" from attempting to

induce another person to resell an article or commodity at not less than a minimum price. Section 34, however, defines a "dealer" as "a person engaged in the business of manufacturing or supplying or selling any article or commodity." It is clear that Ménard in his capacity as district salesman for Beaver Products Co., Ltd., having a stock of his company's products, was a "dealer" within the meaning of Section 34, being "engaged in the business of . . . supplying or selling" the commodities concerned.

It should also be noted that, at the time the undertaking was submitted to Mr. Dumais by Mr. Ménard for signing, Grosserie Centrale, Inc. may already have been carrying a stock of and selling the products manufactured by Beaver Products Co., Ltd. When Grosserie Centrale, Inc. found it impossible to buy directly from Beaver Products Co., Ltd. it made arrangements to obtain the company's products which it required through Marché St. Hubert, the owner of which is a director of the new organization and whose firm is a direct account of Beaver Products Co., Ltd. The form of undertaking submitted by Ménard was not restricted by its terms to merchandise to be obtained directly from the company, but could be read as applying - if signed - to any sale of such merchandise, whether bought directly from the company or indirectly through Marché St. Hubert, including such stock as may already have been on hand. It may well be in this sense that, in his answer to Lavoie's query, on July 19, 1952, Ménard said he tried to have Grosserie Centrale, Inc. sign the undertaking only "to know if they were capable to co-operate and to show their goodwill."

Even if it be held that the undertaking was intended to be limited, and to extend only to supplies to be obtained from the company after Grosserie Centrale, Inc., had been accepted as a wholesaler, still the purpose of the enactment was infringed. There is nothing in the Act which appears to exempt from the application of Section 34 an attempt to induce a person to resell an article or commodity at a price not lower than a given minimum price, where the attempt is made at a time when supply of such article or commodity to such person has not yet been assured, but is aimed at the price to be charged in case such supply should be obtained. If the contrary interpretation of the provisions of the Act were held to be correct, Section 34 could never apply to a price-maintenance agreement or undertaking which was made before the time of the first contract of sale between the parties. Under such an interpretation, escape from the effect of the Section would be all too easy.

From a practical business point of view, it is clear that, in many instances, the most effective time at which a manufacturer might seek to obtain from a merchant an undertaking to maintain prices is when the merchant first indicates a definite desire to obtain goods from the manufacturer.

When Ménard did not succeed in having the management of Grosserie Centrale, Inc. accept the undertaking for the maintenance

of minimum prices he then set out to oppose the recognition of the new organization as a wholesale account of Beaver Products Co., Ltd. and to work against it as far as he could. Mr. Ménard said that his attitude was due to the fact that Grosserie Centrale, Inc. would not carry a full line of products of Beaver Products Co., Ltd. and also because of the co-operation and support given to him by the wholesalers with whom he had been dealing for many years. In explanation of his letter of July 19, (Exhibit P. 4), Mr. Ménard said at one point in his evidence:

"It is understood that I say that we do not sell merchandise to them [Grosserie Centrale, Inc.] and that others, the 'jobbers', help us by this fact."

(Translation, Evidence, December 4, 1952, pp. 38 and 39)

While the refusal to make direct sales to Grosserie Centrale, Inc. had previously been made by Beaver Products Co., Ltd. it is evident that, having failed to secure the desired undertaking, Ménard determined, so far as lay within his power, to refuse to sell or supply products of Beaver Products Co., Ltd. directly to Grosserie Centrale, Inc. and to use his efforts in preventing the company from so doing.

2. As to Roméo Lavoie

On the whole of the evidence and of the record as submitted to us, we are not of the opinion that the activities of Joseph Ménard, as aforescribed, should also be imputed to and held against Roméo Lavoie, sales manager for Beaver Products Co., Ltd.

During the whole course of the inquiry, it has been consistently maintained by Joseph Ménard, the company's salesman for the Chicoutimi - Lake St. John district, that he had both prepared the form of undertaking (Exhibit P. 2) and attempted to have it signed by Gérard Dumais, on his own initiative and without previously consulting his principals. He also persistently maintained that at no time before the beginning of the investigation in the present matter, had Mr. Lavoie been informed that such attempt had been made. Lavoie, himself, when heard before this Commission, affirmed that he had never been made aware of the document prior to the receipt of the letter from the Commissioner under the Combines Investigation Act.

The only contradictory evidence is that of Mr. Dumais, who stated that, in the winter of 1952, he telephoned the office of Beaver Products Co., Ltd. while in Montreal and had a conversation with Mr. Lavoie, during which the latter discussed the matter of prices and stated that the form of undertaking had been prepared by himself and not by the salesman. This testimony must be considered in the light and perspective of the whole of the evidence and on this basis its effect does not modify our opinion stated above. Mr. Dumais may very well have referred over the phone to reprehensible dealings of the company's representative in Lake St. John and Mr. Lavoie may

indeed have given him the impression that he was assuming paternity for some action (in reality ascribable to his employee). This would still not destroy his continued assertion under oath and that of Ménard, that the said Lavoie had never been made really aware of the particular circumstances of the overtures made to Grosserie Centrale, Inc.

It was explained to us that a salesman in the employ of Beaver Products Co., Ltd. may not, of his own authority, decide to acknowledge new distributors and thereby bind the company to sell or supply them. Lavoie however frankly stated to us that, this notwithstanding, whenever some third party complains to him about one of his salesmen, he must, in order to safeguard the latter's prestige, either undertake his defence, or failing this, adopt the attitude that he is not endorsing his conduct; but he should never place his salesman in an embarrassing position, but should rather assume responsibility for his acts, subject to further discussion of the matter. We think this is the real effect of Mr. Lavoie's evidence, as reported at pages 6 and 13 of the original transcript of his evidence as given before this Commission on June 23, 1953 (Translation):

"Q. Concerning Mr. Ménard, Mr. Dumais contends that you would have told him that you were endorsing all that your salesman had done. What have you told him in your telephone conversation?

A. What I have told him, naturally two years or rather a year and a half have elapsed since then, I cannot remember the words verbatim, but I know that not wanting to go over the head of the salesman, I must defend or not endorse him, but not place him, not place the traveller into difficulties, take the responsibility up to a certain extent for what he may do or discuss with the traveller (?) later on.

...

Q. Am I to understand that the salesmen, that the representatives of a particular district have jurisdiction to choose the means which they deem most opportune in the district to obtain clients?

A. That is, no, they never have jurisdiction, but they may submit, a salesman may discuss, each one will discuss his local problems with the sales manager, because the problems vary with each territory. It is not up to him to take the decisions, it is the sales manager who takes the decisions, but the sales manager must not pass over the head of his representatives before the customers, in order to safeguard his prestige."

If Lavoie, while answering Dumais in the aforesaid conversation, was merely following tactics which he usually adopted whenever he wanted to avoid getting involved in a discussion concerning alleged objectionable activities of one of his salesmen, there apparently was

no good reason for him to give much attention to the particulars of the situation complained of. If this is the true explanation of his conduct, it is not surprising that, more than a year afterwards, he was not able to state expressly what actions of the salesman he might have led Dumais to believe he was then approving, or recall the exact answers which he gave to Dumais, especially when the manager of Grosserie Centrale, Inc. did not consider it necessary to press the matter further with him, after their aforementioned telephone conversation. As a matter of fact, it does not appear that, after that date, Dumais ever sought an interview with Lavoie in order to discuss the question, or ever brought the matter specifically to the latter's attention by letter.

In view of the particular circumstances described above, Lavoie should not, in our opinion, be made personally responsible for the acts of the company's salesman, even if he stated in general terms in the telephone conversation that he was accepting responsibility for the said salesman's activities, and gave the impression that he had been the instigator thereof. The acts concerned fall under the provisions of a criminal statute, and we would be reluctant to suggest that Mr. Lavoie be charged with personal responsibility for them, since the evidence has not convinced us that he either authorized such activities, or condoned or approved them, after having been made aware of their true character.

Further, Lavoie's conduct up to the time of the investigation in this matter, as disclosed by the evidence, appears to us to corroborate his sworn assertion that he had no knowledge of the undertaking prepared by Ménard, nor of the latter's attempt to induce Dumais to sign it. As a matter of fact, as late as July 15, 1952, Lavoie appears to have been without information as to the undertaking proposed by Ménard. On that date, a letter was sent to Lavoie by the Commissioner under the Combines Investigation Act (now Director of Investigation and Research), outlining the facts mentioned in a complaint submitted by the manager of Grosserie Centrale, Inc. Immediately after receipt of this information, Lavoie wrote to the company's salesman Ménard; although this letter has not been filed in the record, Lavoie obviously was therein asking his employee for particulars concerning the undertaking which allegedly the latter had sought to obtain from Grosserie Centrale, Inc., because Ménard answered as follows, on July 19, 1952, at the end of a rambling letter covering diverse subjects (Translation):

"You may be assured of one thing, the undertaking which I have asked them to sign, was only to find out if they were capable to co-operate and to prove their goodwill, to do it, but not at all to open that account? Is that all right? If there is something else, I shall be glad to keep you advised."

On the whole we believe that the reason why Lavoie had not yet agreed to acknowledge Grosserie Centrale, Inc. as one of the company's wholesalers, at the date of the aforesaid letter from the

Commissioner, is to be found in the general attitude of the company, to the effect that the established pattern of its system of distribution should not be disturbed and additional wholesalers should not be accepted, unless such change should prove to be of definite value to the company. In this respect, it is to be noted that, over a period of six years, only one new wholesaler has been recognized by the company in the Chicoutimi - Lake St. John district and this happens to be a co-operative group. The original refusal by Lavoie to agree to the request made by Grosserie Centrale, Inc. is to be found in his letter of July 10, 1951, (Exhibit P. 1) to the latter organization. In that letter Mr. Lavoie stated that the request could not be agreed to for the time being in view of the difficulties incurred in obtaining raw material and keeping the company's already acknowledged customers in regular supply. This, Mr. Lavoie explained, is the attitude consistently adopted by the company whenever similar requests are received, in order to allow the company time to make an inquiry concerning the prospective outlet and to make sure that it would be advantageous to accept the new wholesaler. It must be noted that, at this date, July 10, 1951, Ménard and Dumais had not yet discussed the possibility of Grosserie Centrale, Inc. becoming a wholesaler for Beaver Products Co., Ltd. (This is not in doubt because Ménard later on severely criticized Dumais for having gone over his head by writing directly to the company); so that Lavoie's refusal in the first place must certainly have been dictated by reasons other than Dumais' refusal to maintain resale prices of the company's products at the suggestion of Ménard. That his persistent maintenance of this attitude in the following months may have been due to the same reasons, does not appear to us to be incompatible with the evidence as a whole.

3. As to Beaver Products Co., Limited

As to the company itself, we believe that the conclusions which we have arrived at with respect to its sales manager, Roméo Lavoie, should also apply. In our opinion, the aforescribed activities of Joseph Ménard should not be imputed to Beaver Products Co., Limited.

We do not think that a presumption should be drawn from the attitude of the Chicoutimi - Lake St. John district salesman in the latter's dealings which Grosserie Centrale, Inc., to the effect that, in acting as he did, Ménard was following a policy which he knew was that of the company. Ménard knew that, as a district salesman, he had no jurisdiction to make a decision concerning the acceptance of new distributors. Lavoie being the only officer authorized to bind the company in the circumstances, ignorance by Lavoie of what took place at Jonquière should also be deemed to be ignorance by the company and Beaver Products Co., Limited should therefore not be held responsible for Ménard's actions.

Moreover, one may not even be certain that the undertaking requested from Dumais by Ménard was necessarily intended by the latter to be returned to the Head Office of the Company, once

completed and signed. The record indicates that as Ménard's earnings were derived from both commissions and salary he had an active interest in increasing his annual gross sales in his district, but, at the same time, he had to be very careful not to cause dissatisfaction among the already recognized wholesalers in the district, whose co-operation and friendship he definitely needed and had already obtained. Indeed, at many places in his evidence Ménard stressed the great degree of co-operation which was given to him by these jobbers. He mentioned that some two years previously he had been prevented by illness from working for a period of three months and during that time his business actually increased over the corresponding period the previous year through the efforts of these jobbers in securing orders for the products of his company. At another point he said (Translation, Evidence, December 4, 1952, pp. 41 and 42):

"It is true because the travellers from the wholesale firm supported me 100%; they pushed my lines.

• • •

I speak of representatives of wholesale houses here, actually and they are types with whom I have lived for 20 years, they are all friends. They push my lines, they wish to help me to push my lines, they are all friends."

In his letter of July 19, to Lavoie, Ménard had written with reference to the non-recognition of Grosserie Centrale, Inc. as a direct account (Translation):

". . . I much prefer continuing like this, because actually, we not losing sales and we have all the co-operation desired from our jobbers . . ."

It may well be that Ménard sought to obtain the undertaking from Grosserie Centrale, Inc. (without the knowledge of his employers), in the hope of being able to satisfy the friendly jobbers that the acceptance of a new wholesaler in the district would not disturb the already established state of affairs.

Whatever may have been Ménard's motives and even if he really thought that by securing the undertaking he could thereby persuade the company to open the account, nothing in the record indicates that receipt of the signed document by the Head Office would have had any such effect.

4. Conclusions as to the Public Interest

We have already pointed out that the system of wholesaling operated by Grosserie Centrale, Inc. required a difference in price from that involved in full-service wholesaling if the warehouse method of selling was to be offered as a choice to the retail merchant. It may be the opinion of some that such a method of distribution has no

value and does not offer possibility of saving to the retailer whom it seeks to serve. Quite clearly, however, the decision as to whether a new method should be employed or not cannot safely be left to those who are primarily interested in the maintenance of older methods.

Public interest in a healthy competitive system requires that there be opportunity for experimentation and that the success of experiments in merchandising should be dependent upon the degree to which they can meet the public need for economical distribution. A climate favourable to innovation cannot be maintained if obstacles designed to nullify the competitive influence of new methods or to prevent their adoption are placed in the way of those who are attempting to introduce them. It has been pointed out in the course of this case that Grosserie Centrale, Inc. was not prevented from securing products of Beaver Products Co., Ltd. in an indirect way at a price only slightly higher than that paid by its competitors. Apart from the circumstances already reviewed in detail with respect to the matter of resale prices, it is evident that Grosserie Centrale, Inc. could not deal in such products with the same assurance that it would have in those cases in which it had been recognized as a regular customer by the manufacturer. Nor would retailers feel assurance in placing orders with the new organization when it became known that the ability to obtain supplies rested on such a tenuous basis.

Nothing in the foregoing is intended to deny the right of a supplier to select his own customers where such selection is not contrary to public policy. It is suggested, however, that as well as considering specific requirements under law, a supplier should have constantly in mind the public interest in innovation and experimentation where these have the possibility of producing valuable competitive influences. In the field of merchandising there is a feeling evident in many quarters that independent retailers are being handicapped in their efforts to meet the competition of large merchandising organizations which are generally accepted as direct accounts by manufacturers. It would appear only reasonable, therefore, that where retailers so arrange their affairs by co-operative effort or otherwise as to be able to offer manufacturers similar opportunities for direct selling, or where new methods of distribution seeking to place independent retailers in a better buying position are attempted, requests for recognition by manufacturers should not be disregarded. Such requests should be dealt with on their merits and not denied merely to avoid disturbing the status quo. Freedom of opportunity cannot exist for the small merchant if he is denied access to supplies under the same conditions as those applying to large organizations.

Relating the foregoing principles to the circumstances of this case, it is most regrettable in our opinion that Beaver Products Co., Limited did not see fit to grant Grosserie Centrale, Inc. the status of a recognized wholesaler, at least once Grosserie Centrale, Inc. had become definitely established in the district and recognized as such by other important manufacturers. It is also unfortunate that, after having been made aware of their agent's reprehensible activities, the officers of the company limited themselves to showing

that these activities had not been authorized or approved. In this respect, the terms of the letter sent by Mr. R. Lavoie in the name of Beaver Products Co., Limited, on July 24, 1952, to the Commissioner under the Combines Investigation Act, in answer to the latter's letter of July 15, tend to cast serious doubts on the company's readiness to issue positive and specific instructions to its employees and agents, expressly directing them to comply with legislation concerning resale price maintenance. Unequivocal direction as to policy should be the frankly expressed attitude of any manufacturer or dealer sincerely desirous of complying with the law. Consequently the conclusion which we have reached on the whole of the record and which we have expressed above, with respect to both R. Lavoie and Beaver Products Co., Limited, in the light of the particular circumstances submitted to us, should in no way be interpreted as an indication that we are of the opinion that manufacturers or other dealers can relieve themselves of the responsibility of conducting their business in keeping with the legislation by the simple process of stating that they have not been made aware of the activities of their agents or representatives.

At all events, once an employer's attention has been drawn to such detrimental activities of his salesmen or agents as have been reviewed and discussed in the present report, he should be held fully responsible for any subsequent repetition of similar activities. Otherwise the public interest would be jeopardized.

(Sgd.) C. R. Smith

Chairman

(Sgd.) Guy Favreau

Member

(Sgd.) A. S. Whiteley

Member

Ottawa,
December 29, 1953.

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